REMARKS

Specification

In the specification, the Abstract has been amended to correct minor editorial problems.

Summary

Claims 1-3, 5, 7-16, 19 and 20 stand in this application. Claims 4, 6, 17 and 18 have been canceled without prejudice. Claims 1, 5, 7, 9, 14 and 19 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

35 U.S.C. § 102

At page 3, paragraph 5 of the Office Action claims 1, 4-9, 13, 14 and 17-20 stand rejected under 35 U.S.C. § 102 as being anticipated by Tackin, United States Patent Number 7,180,892. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims [numbers] in order to facilitate prosecution on the merits.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Tackin fails to teach each and every element recited in

claims 1, 4-9, 13, 14 and 17-20 and thus they define over Tackin. For example, with respect to claim 1, Tackin fails to teach, among other things, the following language:

> determining an end to said voice information based on said measurements and a delay interval; and adjusting said delay interval to correspond to an average packet delay time

According the Office Action, this language is disclosed by Tackin at Col. 35, lines 22-44. Applicant respectfully disagrees.

Claim 1 defines over Tackin. Tackin at the given cite, in relevant part, states:

> Second, the voice synchronizer estimates how long the first voice frame of the talk spurt should be held. If the voice synchronizer underestimates the required "target holding time," jitter buffer underflow will likely result. However, jitter buffer underflow could also occur at the end of a talk spurt, or during a short silence interval. Therefore, SID packets and sequence numbers could be used to identify what caused the jitter buffer underflow, and whether the target holding time should be increased. If the voice synchronizer overestimates the required "target holding time," all voice frames will be held too long causing jitter buffer overflow. In response to jitter buffer overflow, the target holding time should be decreased. In the described exemplary embodiment, the voice synchronizer increases the target holding time rapidly for jitter buffer underflow due to excessive jitter, but decreases the target holding time slowly when holding times are excessive. This approach allows rapid adjustments for voice quality problems while being more forgiving for excess delays of voice packets.

As indicated above, Tackin arguably discloses wherein the target holding time is adjusted in response to a preexisting overflow or underflow within the jitter buffer. In contrast, the claimed subject matter discloses "adjusting said delay interval to correspond to an average packet delay time." Adjusting the delay interval to correspond to an average packet delay time may prevent the occurrence of an overflow or underflow. Applicant respectfully submits that this is clearly different than the above recited teaching of Tackin. Consequently, Tackin fails to disclose all the elements or features of the

claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 2, 3, 5, 7 and 8 which depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Tackin.

Independent claims 9 and 14 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 9 and 14 are not anticipated and are patentable over Tackin for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claims 9 and 14. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 10-13, 15, 16, 19 and 20 that depend from claims 9 and 14, and therefore contain additional features that further distinguish these claims from Tackin.

35 U.S.C. § 103

At page 6, paragraph 7 claims 2, 3, 12, 15 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tackin in view of Clemm, United States Patent Number 6,865,162. At page 7, paragraph 8 claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tackin in view of Sih et al., United States Patent Number 5,920,834 (hereinafter "Sih"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish

a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 2, 3, 10-12, 15 and 16. Therefore claims 2, 3, 10-12, 15 and 16 define over Tackin, Clemm and Sih whether taken alone or in combination.

If an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 2, 3, 10-12, 15 and 16 is respectfully requested. Claims 2, 3, 10-12, 15 and 16 also are non-obvious and patentable over Tackin, Clemm and Sih, taken alone or in combination, at least on the basis of their dependency from claims 1, 9 and 14. As discussed above claims 1, 9 and 14 define over Tackin. Moreover, Clemm and Sih do not contain the missing limitations.

Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Conclusion

For at least the above reasons, Applicant submits that claims 1-3, 5, 7-16, 19 and 20 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

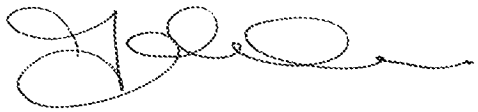
Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-3, 5, 7-16, 19 and 20 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC



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Under 37 CFR 1.34(a)

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